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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,117	11/26/2001	Peter Rosler	01-378	7336

7590

11/06/2002

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EXAMINER

WALLS, DIONNE A

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 11/06/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/994,117

Applicant(s)

ROSLE, PETER

Examiner

Dionne A. Walls

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1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has recited an "open ended hull (8) on the top" (emphasis added). The phrase "the top" lacks antecedent basis because it is not clear *what* the open ended hull is on top of. If the phrase refers to the open ended hull being positioned on the top of the sealing cover, it is not clear on what surface (i.e. inner, outer) said open ended hull is located. Applicant is requested to more clearly recite the structural relationship between the open ended hull and the sealing cover.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kontos (US. Pat. No. 6,161,550).

Kontos discloses a cigar holder (corresponding to the claimed "packaging for a cigar") with cutter, comprising a cylindrically-shaped hollow body 12 (corresponding to

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the claimed "hull (1)" , in whose inner space a cigar 22 is taken up, whereby said hollow body 12 can be closed off with a cap 14 (corresponding to the claimed "cover (4)"). The cap 14 has an inner, open area in which the plug-removing member 50 (corresponding to the claimed "cigar cutter (5)") is arranged (see cols. 2-4 and figs. 2-4). While Kontos may not specifically state that its cap is a "sealing" cover, it follows that the cap serves this purpose since it prevents cigars placed in the hollow body from falling out from the open end of said body, i.e. sealing them inside the body.

Regarding claim 2, the inner, open area (seen in the figs) of the cap 14, has been construed by the Examiner is being the "open ended hull (8)" which is connected to the sealing cover, on the top.

Regarding claims 3 and 4, Kontos discloses that the plug removing member 50 is a hollow cylindrical tube that can have a sharp/straight edge (corresponding to the claimed "ring-shaped cutting blade/straight cutting edge")(see col. 4, lines 3-6).

5. Claims rejected under 35 U.S.C. 103(a) as being unpatentable over Kontos (US. Pat. No. 6,161,550 in view of Winqvist (US. Pat. No. 1,674,271).

While Kontos may not explicitly state that the plug-removing member exhibits a wave-shaped or zig-zag shaped cutting edge, it does state that the edge of the member can be cut at an angle (col. 4, line 5). Further, Winqvist discloses a cylindrical cutting blade, serving as a coring/cutting implement, having both zig-zag / wave-shaped edges (see figs. 2-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the cutting edge of the plug-removing member of Kontos

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and incorporate the zig-zag/wave-shaped edge since shaping blades in this manner is known in the knife/blade art to facilitate removal of a core section from its source.

Conclusion

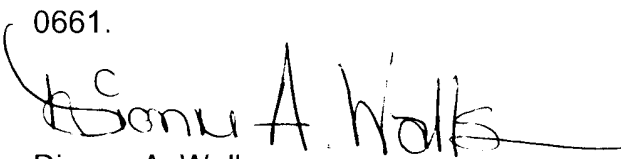
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Nicotra (US. Pat. No. 5,862,809).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.



Dionne A. Walls
November 1, 2002